IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. L.P.A No. 1048 of 2002.

Jasbir Singh Bansal & others,

.....Appellants

through Mr.A.K.Chopra, Sr.Advocate, with Ms.Shaibya Sood, Advocate

v.

Chandigarh Housing Board & others

.....Respondents

through Mr.Naresh Prabhakar, Advocate

2. L.P.A No. 125 of 2003.

Bhupinder Nath Joshi,

.....Appellant

through Ms. Archana Sharma, Advocate

v.

Chandigarh Housing Board & another

.....Respondents

through Mr.Naresh Prabhakar, Advocate

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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By this order, we propose to dispose of L.P.A Nos.1048 of 2002 and 125 of 2003, as they arise from the same judgment.

The appellants, alleging discrimination in the fixation of price for the dwelling units, allotted to them, filed Writ Petitions. Vide order, dated 22.5.2002, the learned Single Judge dismissed the Writ Petitions, and held that the fixation of a higher price did not suffer from the vice of discrimination.

The Chandigarh Housing Board floated a scheme for allotment of 1750 dwelling flats in Sector 45-A, 45-B and 39-B, Chandigarh in 1986. For reasons that are not germane to the present controversy, the flats were re-advertised in 1987. The appellants applied for allotment of Category-II flats and deposited a sum of Rs.8,000/- each, as the initial deposit, as required by the terms and conditions for allotment. The tentative price for each dwelling unit was fixed at Rs.1.67 lac. The appellants were successful in the draw of lots, held on 20.2.1988 and, therefore, proceeded to deposit installments, as required by the Housing Board. It would be necessary to notice here that no particular floor or flat was allotted. Thereafter, vide advertisement, dated 12.4.1989, the Housing Board informed the successful allottees, including the appellants, that 264 flats of Category-II were under construction, but on account of revised designs, the area of the flats would be increased to 1220 sq. feet and consequently, price of each dwelling unit would be Rs.2.92 lacs for the ground floor, and Rs.2.65 lacs for the first and the second floors.

Upon completion of 162 flats, a draw of lots was held on 26.5.1990, to determine the particular floor and the particular flat to be allotted. The appellants were unsuccessful in this draw. Another draw was held on 15.9.1991, in which the appellants were successful and possession of flats was handed over to them in December 1991. The price

of these flats, however, was Rs.3.80 lacs for the ground floor, and Rs.3.42 lacs for the first and second floors. Price for the ground floor was subsequently reduced to Rs.3,65,100/-. The appellants, alleging discrimination, as regards fixation of price of the flats, primarily contended that as regards the same scheme, the Housing Board could not fix different rates for similar flats.

The Chandigarh Housing Board, on the other hand, denied any discrimination and contended that though allotments were under one scheme, draw of lots for actual possession took place in two different phases. The appellants were successful in the second phase. A higher rate was charged from the appellants, on account of escalation of prices and delayed availability of a clear site.

The learned Single Judge accepted the stand of the Housing Board and dismissed the writ petitions.

Counsel for the appellants contends that for the same scheme and for similar flats, the Housing Board could not charge different rates. The explanation of the Housing Board that prices of building material escalated etc. remained unsubstantiated and should not have been accepted. The appellants have been charged a higher rate and, thus, discrimination is writ large on the action of the respondents.

Counsel for the Chandigarh Housing Board contends that the impugned judgment does not suffer from any illegality, error of law or such error of fact as would merit interference. It is contended that the appellants were allotted flats in the second phase and as held by the learned Single Judge escalation in prices of building material was a justifiable cause for demanding a higher price from the appellants.

We have heard learned counsel for the parties and perused the paper book, as also the impugned judgment.

The facts of the case need not be recapitulated. Discrimination, by demanding higher amount, for the price of a flat, is the foundation of the appellants' grievance. The Housing Board, admittedly, has charged a higher price from the appellants vis a vis other allottees. This difference in price is sought to be justified, as the appellants were allotted flats 14 months after the other allottees. The appellants were unsuccessful in the first phase but successful in the second phase. In the meanwhile, prices of building material increased, thus, requiring the Housing Board to charge a higher price. The learned Single Judge accepted this explanation and held as follows :-

> "The Court is not impressed with the later part of the additional affidavit pertaining to the area under dwelling units allotted to the petitioners being deeper to the extent of 8' to 10' as compared to 4' to 5' for charging extra price from the petitioners as this factor was known/available to the respondents. The averments with regard to the dwelling units being constructed in two phases and being allotted to the petitioners in the second draw of lots and that in the meanwhile there was increase in the cost of construction, can not, however, be faulted on any ground whatsoever. All that this Court can observe is that the petitioners were not as lucky, as allottees, who were successful in the first draw of lots. This is just a matter of chance that the petitioners were successful in the draw

of lots that was held subsequently to the one, who were allotted dwelling units in the first draw of lots. It is significant to mention here that one of the stipulations contained in the allotment letter is that the price fixed therein is tentative. It is further significant to mention here that even though the price was increased initially from the original to Rs.3.80 lacs for the ground floor flat and Rs.3.42 lacs for the first floor and second floor flats in view of the costs of the construction of the flats, the same was lateron revised and reduced vide order dated 20.11.1992 (Annexure P-7). So far as the ground floor is concerned, it was reduced from Rs.3.80 lacs to Rs.3,65,100/-. The revision of price would clearly demonstrate that respondent-authorities were working out the price depending upon various circumstances, one such circumstance for increase in price is cost of construction due to escalation of price of flats. That being so, no occasion at all arises to annal such an increase. These petitions have no merit and, thus, deserve to be dismissed."

As held by the learned Single Judge, the difference in time between the two sets of allotments, though under the same scheme, and with respect to similar flats, necessitated different prices. The appellants were unsuccessful in the first phase but succeeded in the second phase, 14 months after the first allotment. The action of the Housing Board, in charging a higher rate from the appellants, in our considered opinion, does

not suffer from the vice of discrimination. The conclusions, drawn by the learned Single Judge, in our opinion, do not call for any interference. As the impugned judgment does not suffer from any illegality or infirmity, the present appeals are dismissed.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

January 18, 2007.
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